In the Supreme Court of the United States

OCTOBER TERM, 1966

No. ~~[illegible]~~ 31

WYANDOTTE TRANSPORTATION COMPANY, UNION BARGE LINE CORPORATION and CARGILL, INC., *et al.*,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Fifth Circuit.

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PETITION FOR A WRIT OF CERTIORARI To the United States Court of Appeals For the Fifth Circuit.

Come now Wyandotte Transportation Company, Union Barge Line Corporation, Cargill, Inc., Inland Rivers Transportation Co., Jeffersonville Boat & Machine Co., Continental Insurance Co., and Travelers Insurance Company and respectfully pray that this Honorable Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit entered herein on July 13, 1966, reversing a judgment of the United States District Court for the Eastern District of Louisiana in favor of respondents, and the order of the same Court denying a rehearing *en banc*, entered herein on September 12, 1966.

OPINIONS BELOW.

The opinion of the District Court, entered herein on June 30, 1964, is unreported. The opinion of the United States Court of Appeals for the Fifth Circuit is unreported. Both opinions are reproduced in the Appendix hereto. The opinion and the order denying rehearing are unreported, and are reproduced in the Appendix.

JURISDICTION.

The judgment of the Court of Appeals was entered on July 13, 1966. A petition for rehearing *en banc* was timely filed and thereafter the said Court entered its order denying rehearing, on September 12, 1966. The mandate has been stayed pending the filing of this application.

The jurisdiction of this Court is invoked under 28 U. S. C. A. § 1254(1).

QUESTIONS PRESENTED.

1. Whether a vessel owner or other party who by his negligence causes a vessel to sink and become an obstruction to navigation is liable *in personam* to the United States for the cost incurred by the United States in removing the obstruction.

2. Whether a sunken vessel constitutes an "obstruction" to navigation under Section 10 of the Rivers and Harbors Act of 1899 (33 U. S. C. A. Section 403), the removal of which could have been enforced by injunction pursuant to the provisions of Section 12 of the Rivers and Harbors Act (33 U. S. C. A. Section 406).

3. Whether the funds expended by the Government to raise Wychem 112, under the Disaster Relief Act, 42 U. S. C. A. § 1885, *et seq.*, are recoverable from the petitioners.

STATUTES INVOLVED.

The statutes involved are material parts of the Rivers and Harbors Act of March 3, 1899, 30 Stat. 1151, *et seq.*, as amended, 33 U. S. C. 401, *et seq.*, consisting of § 10, 33 U. S. C. 403; § 12, 33 U. S. C. 406; § 15, 33 U. S. C. 409; § 16, 33 U. S. C. 411 and 33 U. S. C. 412; § 19, 33 U. S. C. 414; § 20, 33 U. S. C. 415 and 42 U. S. C. A. § 1855, *et seq.* With the exception of the last statute, they are printed in the Appendix at pages 36-41, *infra*.

STATEMENT OF THE CASE.

Two cases are involved herein. They were consolidated by the District Court for disposition of the motions to dismiss and/or for summary judgment filed by all of the respondents.

In the case of *United States v. Wyandotte Transportation Co., et al.*, involving the barge Wychem 112, the parties respondent before the District Court and the Court of Appeals were Wyandotte Transportation Co., owner of the Wychem 112; Union Carbide Corporation, owner of the chlorine cargo, and Union Barge Line Corporation, owner and operator of the towboat *Eastern*, which was towing the Wychem 112 at the time of the accident. The facts as alleged in the libel and as adopted by the Court of Appeals were as follows: On March 15-17, 1961, a cargo of 2,200,000 pounds of liquid chlorine was loaded into the tanks of the Wychem 112 at Geismar, Louisiana for delivery to Union Carbide Corporation at South Charleston, West Virginia. On March 21, 1961, the Wychem 112 and other barges in tow of the *Eastern* departed from Geismar with the Wychem 112 positioned in the fourth or last tier of the tow. Above Baton Rouge the tow was rearranged and the Wychem 112 became the lead barge on the port or

lefthand side. On March 23, 1961, with weather and visibility good, but with a strong current, the Wychem 112 began to dive, putting her bow down and her stern up. She sank near Vidalia, Louisiana in the Mississippi River (R. 27). Repeated efforts were made by the owners and operators of the barge during the spring and summer of 1961 to locate and raise the cargo. These efforts were unsuccessful and in November 1961 Wyandotte tendered abandonment of the barge to the Government (R. 53). Thereafter, the Government began a study of the extent and potential danger of the chlorine. In July 1962, technical opinions were issued to the effect that as long as the barge remained in the river, it was a potential danger and recommendations were made to raise the chlorine tanks (R. 202). On September 25, 1962, the District Engineer, Corps of Engineers, Vicksburg District, wrote to Wyandotte, advising that the Secretary of the Army had determined that the sunken barge Wychem 112 was an obstruction to navigation; that Wyandotte's tender of abandonment was accepted and that they were proceeding under authority of the Secretary of the Army to remove the barge under the provisions of Section 19 of the Rivers and Harbors Act of 3 March 1899 (33 U. S. C. A. 414) and that after recovery of the barge Wychem 112 and/or its cargo, the United States would retain the right of possession and title thereto as salvor (R. 54-56). In view of the Government's opinion that the chlorine constituted a hazard to public health and safety, the President on October 10, 1962, proclaimed it a major disaster. The tanks were removed at an alleged cost of approximately $3,000,000.00. The United States then brought suit *in rem* against the barge and her cargo and *in personam* against Union Carbide Corp., Wyandotte Transportation Co. and Union Barge Line Corp. (R. 203). Upon motion of the United States,

the District Court ordered the sale of the chlorine cargo which had been seized by the Marshal at the commencement of the proceedings and the proceeds paid into Court pending final disposition of the litigation (R. 203).

In the second case, *United States v. Cargill, et al.*, the respondents are the owners, managers, charterers and insurers of the sunken barges L1 and M65. Again, the facts alleged by the Government and adopted by the Court of Appeals were that the M65, owned by Jeffersonville Boat & Machine Co., and the L1, owned by Cargo Carriers Inc., were moored by a tug at the Cargill fleet mooring at Jackson's Landing, Mile 227.5 above Head of Passes, Baton Rouge, Louisiana, on March 30, 1961. The next day the tanker *Esso Zurich,* bound upriver for Baton Rouge, collided with and sank an unmanned and unlighted barge, which was drifting in the channel. The incident was reported by radio to the barge fleet at Baton Rouge and the two barges, M65 and L1, were discovered missing. Although only one barge, believed to be the L1, was located and showed marks of a collision, both barges, L1 and M65, were reported by Cargo Carriers Inc. as sunk. Cargo Carriers Inc. then marked the barges for day and night navigation. On April 9, 20 and 26, 1962, Inland Rivers Transportation Co. and Cargo Carriers Inc. wired the District Engineers that they had abandoned the Barges L1 and M65 and considered the Government the owner of the vessels. The United States refused to accept abandonment and responsibility for marking and removing the wrecks. The United States then brought suit against the owners, managers and charterers of the barges, alleging negligence in the condition and mooring of the barges and praying that the respondents be decreed the owners of the wrecked barges and liable for their removal. The barges remain unmoved (R. 200, 201).

On June 30, 1964, the District Court granted the respondents' motions for summary judgments and dismissed the libels (R. 190). In the Reasons for the judgments of dismissal, the Court ruled that the only right which the Government has to recover the expenses of removal is a right *in rem* against the vessels themselves and that there is no right *in personam* against the owners or operators of the vessels (R. 191).

The Court of Appeals reversed the judgments of dismissal and remanded the cases to the District Court for a determination as to whether the acts of the various respondents in connection with the sinking of the vessels constituted negligence (R. 218, 219). If the respondents in the *Cargill* case are found to be negligent, the District Court is directed to order the respondents to raise the L1 and M65 or bear the reasonable cost of their removal. If negligence is found on the part of the respondents in the Wychem case, the damages to which the Government is entitled are those reasonably flowing from respondents' negligence and subsequent failure to raise the vessel.

All of the respondents, with the exception of Union Carbide Corporation, joined in a petition for rehearing *en banc*. In a separate petition, Union Carbide requested that the judgment of the District Court be affirmed. On September 12, 1966, the Court of Appeals granted the petition of Union Carbide and denied the petition of the other respondents (R. 257).

REASONS FOR GRANTING THE WRIT.

I.

In holding that the Government's right to recover expenses of removing a vessel negligently, as opposed to willfully, sunk in a navigable channel includes an *in personam* in addition to an *in rem* right, the Fifth Circuit has created an entirely new remedy. This holding is in direct and irreconcilable conflict with decisions of the Third and Ninth Circuits on the same matter. *The Manhattan*, 85 F. (2d) 427 (CA 3, 1935); *United States v. Zubik*, 295 F. (2d) 53 (CA 3, 1961) and *The Texmar*, 319 F. (2d) 512 (CA 9, 1963, cert. denied 375 U. S. 966). Not only is the Fifth Circuit's opinion in conflict with the Third and Ninth Circuits, but it is also in conflict with its own opinion in *China Union Lines, Ltd. v. A. O. Andersen and Co.* (CA 5, 1966) 364 F. (2d) 769, decided two weeks later than the instant case. Each of these cases holds categorically that the Government has no *in personam* right to recover removal expenses.

The Manhattan, 10 F. Supp. 45, affirmed 85 F. (2d) 437, cert. denied 300 U. S. 654, involved the question of whether the cost of removal of a wreck could be added to the Government's recoverable collision damages. In ruling adversely to the Government, the Court stated (p. 49) that if a sunken vessel is a menace to navigation its disposition is a matter of public concern. That Court not only approved the right of abandonment, but categorically denied the Government's right to recover removal expenses in an *in personam* action. It stated:

> "So far as I know the right of recoupment against a tort-feasor who causes a sinking has never been asserted by the government in case the wreck was privately owned, and I can find nothing in the statute which creates such a right either in the case of pri-

vately owned vessels or of those which are the property of the government. In fact, the rights in rem which are conferred would seem to negative that intent. At any rate the statute is silent upon the subject."

The above decision was followed by *Zubik, supra.* Again, the Third Circuit recognized the *in rem* right, and denied the Government's right to recover *in personam.* The issue there was whether the United States was entitled to recover the cost of removing a negligently sunk vessel from a navigable river in an *in personam* action. In reaffirming its previously asserted position, the Court said (p. 57):

"The sum total of the statutory scheme, excepting its criminal penalty provisions, evidences that the forfeiture right accorded to the Government to remove wrecks obstructing navigable waters is in the nature of an *in rem* right against the removed vessel and not an *in personam* right against the vessel owner."

* * *

"It is the province of Congress and not of the Courts to legislate and where Congress has legislated in a particular field explicitly and with definiteness as it has in the Rivers and Harbors Act for the Courts to expand the periphery of the legislative scheme would be judicial trespass." (p. 58.)

The Ninth Circuit in the *Texmar* case (*United States v. Bethlehem Steel Company, et al.*), *supra,* was equally emphatic in declining to commit "judicial trespass" and in confining the Government to its *in rem* rights. It stated (p. 520):

"Looking to the Rivers and Harbors Act for the answer to our problem, as we think we must, we find that Congress, though dealing in detail with the many

problems arising out of wrecks and obstructions to navigation, has not, though it would have been natural and logical for it to have done so if it so desired, created the right which the Government here asserts.

"We conclude, then, that Congress, in the light of the historical law of shipping, which seems to have included a right of an owner to abandon a wreck with impunity, probably did not intend to create, in the Rivers and Harbors Act, the obligation *in personam* which the Government here asserts. If we are correct in this estimate, this court should not read such an obligation into the statutes."

In *China Union Lines, Ltd. v. A. O. Andersen; American Cyanamid Company, et al., supra* (decided July 27, 1966), the Government took charge of a burning vessel which had been damaged by collision, in order to clear the channel. The owner filed limitation of liability proceedings in which the Government filed a claim for removal expenses. The District Court, before issuing the usual injunction, required the owner to pay the expenses of removal into Court in discharge of the Government's lien against the vessel. *The Fifth Circuit explicitly recognized that the Government could not proceed in personam against the vessel owner to recover the expenses of removal. In support of that conclusion, it cited the Texmar and Zubik cases, although, two weeks earlier, in permitting an in personam recovery against the petitioners herein, it had rejected those same decisions.* In discussing the *in personam* liability of the owner, the Fifth Circuit stated (p. 793):

"On the first issue, the Government must prevail. It had a statutory right to hold the vessel and cargo, dispose thereof at public sale and deduct from the proceeds $8,582.00, the expenses of removal. *While the Government could not proceed in personam,*

> *against China Union, United States v. Bethlehem Steel Corp.*, 319 F. (2d) 512, (9 Cir. 1963), cert. denied 375 U. S. 966, and *United States v. Zubik*, 295 F. (2d) 53 (3d Cir. 1961), we must remember that it was China Union which was seeking the injunction and a limitation of its liability. It was to its advantage, and the advantage of its underwriters, to free the Reliance of the Government's statutory lien, and secure the decree of injunction. The judge, in requiring China Union to make this payment, recognized that the equities were with the Government and that the Government's lien was first in time and prior in right. *The order of the court did not amount to a judgment in personam against the petitioner, but merely required China Union to do what it should have done in the first instance.*" (Emphasis supplied.)

In this manner the Court enforced the Government's prime *in rem* lien against the wreck.

It is apparent that the Court below is not only in direct conflict with other circuits on the issue of the availability of the *in personam* remedy, but that there is conflict on that issue within the Circuit itself. This conflict between Circuits and within the Fifth Circuit itself can only be resolved by the authoritative action of this Court. The problem presented is one of recurring importance not only to the Government, but also to the maritime industry.

II.

The decision below in further ruling that a vessel sunk in a navigable channel constitutes an "obstruction" within the meaning of § 10 of the Rivers and Harbors Act of 1899, the removal of which may be compelled by injunctive process under § 12 of that Act, is in conflict with the Second Circuit's opinion in *United States v. Wil-*

son (CA 2, 1956), 235 F. (2d) 251. On this issue the opinion below is not only at complete variance with *Wilson*, but occupies the unique position of being the first and only decision so construing §§ 10 and 12 of the statute.

There is involved herein not only a basic conflict between circuits as to the rights accorded the Government, but also a marked difference of view between the Second Circuit and the Court below in the construction and application of the relevant provisions of the Rivers and Harbors Act of 1899. We respectfully urge the necessity of the interposition of this Court to clarify the interpretation of this important federal statute and to resolve this additional conflict.

The Court below, in order to reach the ultimate conclusion that the Government can either compel a negligent party to remove a sunken vessel or pay the cost of removal not only decided that such a vessel is an "obstruction" within the meaning of Section 10 of the Act and that its removal may be compelled by injunctive process under Section 12 but also that the authorization of an *in personam* action is implied from the existing remedies (R. 210). No other decision construing the Rivers and Harbors Act of 1899 so holds.

An interpretation of Sections 10 and 12 was squarely before the Second Circuit in *United States v. Wilson, supra.* Section 10 prohibits the creation of any *obstructions* to the navigable waters of the United States and makes it unlawful to *build any structures* in such waters without the approval of the Secretary of the Army. Section 12 provides a fine for violation of Section 10, but provides injunctive relief *only* with respect to *structures* erected in violation of Section 10. The questions as to whether a sunken vessel is an *obstruction* within the purview of Section 10 and whether its removal could be secured by

an injunction under Section 12 was squarely before the Court in *Wilson* and the ruling of the Second Circuit was not only contrary to the ruling of the Court below in the instant case, but was also contrary to the holding of *United States v. Hall*, 63 Fed. 472 (CA 1, 1894), upon which the Court below principally relied. In *Wilson*, the United States brought an action to compel the defendants to remove a sunken barge from the Hudson River. The Government advanced the same legal theory as adopted herein by the Court below. The Second Circuit held, first, that the Rivers and Harbors Act of 1890, under which *Hall* had been decided, was repealed by the 1899 Act—thus destroying *Hall* as a precedent—and, second, that a Section 12 injunction could not be granted to compel the removal of a sunken vessel. The Court ruled that the injunctive power is expressly limited to the "removal of any structures or parts of structures erected in violation of the provision of Sections 9, 10 and 11 of the 1899 Act. 33 U. S. C. A. Sections 401, 403 and 404," and that a sunken barge, although an "obstruction," was not a "structure" within the meaning of Sections 9, 10 and 11 of the Act (p. 253). It concluded by saying (p. 253):

> "Thus we find nothing in the 1899 Act which justified an injunction whereby the cost of removal may be saddled upon any of these defendants. This conclusion is in accord with In re Eastern Transportation Co., *supra*. On this ground we hold that the dismissal was rightly granted."

III.

In Article Eighth of its libel involving the Wychem 112, the Government alleges that on October 10, 1962 the "casualty was proclaimed a major disaster" under the provisions of the Disaster Relief Act, Public Law 875, 81st Congress, 42 U. S. C. § 1855, *et seq.* (R. 30). In Article Ninth it alleges that "the tanks were removed with extreme care against any puncture and with a mobilization of the Civil Defense, Public Health and State Authorities under the Disaster Relief Act * * *" (R. 30).

Section 1855 of Title 42 of the United States Code declares the intent of Congress to be "to provide an orderly and continuing means of assistance by the Federal Government to States and local governments in carrying out their responsibilities to alleviate suffering and damage resulting from major disasters, to repair essential public facilities in major disasters, and to foster the development of such State and local organizations and plans to cope with major disasters as may be necessary." There is nothing in the Act itself or in the legislative history of the Act to support any claim that the participating federal agencies may seek reimbursement from private parties who could be said to have created the disaster. Nor is there any basis in the common law for such a remedy. See for example, *Willamette Iron Bridge Co. v. Hatch*, 125 U. S. 1; *Village of Palmyra v. G. S. Warren, et al.*, 114 Ill. App. 562; *Thornton v. The Livingston Rae* (D. C. N. Y. 1950), 90 F. Supp. 342.

Although the libel plainly indicates that the funds sought to be recovered were not disbursed by the Corps of Engineers under its appropriation for administering the Rivers and Harbors Act of 1899, but were allocated by executive proclamation under the Disaster Relief Act of

1950, the Government has not nor can it show any legal basis or Congressional intent permitting the sovereign to recoup disaster relief costs from the citizenry.

This issue was before both the District Court and the Court of Appeals. It was not reached by either Court in light of their decisions based upon the Rivers and Harbors Act of 1899.

IV.

The issues involved herein have implications which go far beyond the interests of the particular litigants. The Court below was well aware of the overriding public importance of the questions with which it dealt for it said, in referring to the Mississippi River: "The national character of this natural resource gives the Government an essential federal interest in it as a natural artery of commerce," and in referring to the Rivers and Harbors Act of 1899: "our interpretation of the statute is not unusual in view of the wide-spread national interest in its subject matter" (R. 216).

The interest to which the Court referred is not confined to the Government. If the entire maritime industry must assume a new liability, with far-reaching consequences, that liability should be imposed by Congressional rather than judicial action, a position approved and adopted by the Court in the *Texmar* case.

CONCLUSION.

These cases contain fundamental questions involving the interpretation and application of an important federal statute. The decision below is in direct conflict with three decisions in other Circuits and with one decision in the Fifth Circuit. This petition for a writ of certiorari should

be granted so that an authoritative determination of those questions can be made and the conflict resolved.

Respectfully submitted,

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APPENDIX A.

ORDER AND REASONS OF DISTRICT COURT.

MINUTE ENTRY
JUNE 30, 1964
WEST, J.

(Title Omitted.) Numbers 667 and 668

These two cases have been consolidated for disposition by this Court on the various motions for summary judgment filed by all respondents in both cases. After pretrial conference, it was agreed by all parties in both suits that these matters would be submitted to the Court for decision on briefs to be filed, and that disposition of these cases would await the disposition by the United States Supreme Court of a similar matter presented in the case of United States of America v. Bethlehem Steel Corporation, et al., 319 F. 2d 512, which was before that Court on an application for writ of certiorari.

The Bethlehem Steel case having now been disposed of, and after due consideration by this Court of the records in these cases, together with the extensive briefs and exhibits filed by all counsel,

IT IS ORDERED that the motions filed by each respondent in both cases for summary judgment in their favor be, and they are hereby GRANTED, and these suits will be, accordingly, be dismissed at plaintiff's cost.

REASONS

These cases involve the question of whether or not the United States of America may recover damages from the owners and operators of vessels which have been sunk in a navigable stream with or without the negligence of the owners and operators thereof, and subsequently removed from the navigable stream by the United States Government and at its expense.

This Court is unable to find any authority of any kind which would support the proposition that the Government, under these circumstances, has a right to recover the cost of raising such vessels from the owners or operators thereof. The jurisprudence is clear and unequivocal to the effect that the only right in such a case that the United States Government has to recover its expenses is a right in rem against the vessels themselves. There is no right in personam against the owners of the vessels where the owners of the vessels have abandoned them to the Government. In the instant case, the vessels involved were abandoned and the Government did, in fact, acknowledge and accept the abandonment by attaching, seizing, and selling the vessels and their cargoes when raised from the bottom of the Mississippi River. Thus, the Government had the benefit of and has exercised completely its right, in rem, of recovery and it has no further right of recovery against the owners of the vessels. Willamette Iron Bridge Co. v. Hatch, 125 U. S. 1, 8 S. Ct. 811 (1888); Loud v. U. S., 286 F. 56 (CA 6 1923); The Manhattan, 10 F. Supp. 45, Aff. 85 F. 2d 427 (CA 3 1936); U. S. v. The Bessemer, 300 U. S. 654, 57 S. Ct. 432; Zubik v. U. S., 190 F. 2d 278 (CA 3 1951); U. S. v. Zubik, 295 F. 2d 53 (CA 3 1961); U. S. v. Bethlehem Steel Corp., et al., 319 F. 2d 512 (CA 9 1963); 33 U. S. C. A. 409, et seq.

/s/ E.G.W.

JUDGMENT OF DISTRICT COURT.

Number 667 and Number 668.

(Title Omitted.) Filed: June 30, 1964.

For written reasons assigned and filed herein on June 30, 1964:

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of all respondents, and against the plaintiff, dismissing these suits at plaintiff's cost.

Baton Rouge, Louisiana, June 30, 1964

/s/ E. GORDON WEST

United States District Judge

APPENDIX B.

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

(No. 22148—Title Omitted.)

(July 13, 1966.)

Before RIVES and GEWIN, Circuit Judges, and ALLGOOD, District Judge.

GEWIN, Circuit Judge: This is an appeal from the judgment of the United States District Court for the Eastern District of Louisiana in two admiralty cases involving the question of whether one, who by his alleged acts of negligence causes a vessel to sink and obstruct navigation in inland waterways, may abandon the vessel without incurring liability for either its removal or cost of removal. The cases were consolidated[1] by the District Court for dis-

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[1] In the case of *United States v. Cargill, et al.*, involving sunken barges L 1 and M 65 the parties defendant are the owners, managers, charterers, and insurers. These barges have not been removed. In the case of *United States v. Wyandotte Trans-*

(Continued on following page)

position of the motions for summary judgment filed by all defendants in both cases pursuant to Rule 58(b) of the Supreme Court Admiralty Rules. The motions for summary judgment were granted and the suits dismissed.

In *United States v. Cargill*, two barges, M 65, owned by Jeffersonville Boat and Machine Corp., and L 1, owned by Cargo Carriers, Inc., were moored by a tug at the Cargill fleet mooring at Jackson's Landing, Mile 227.5 above Head of Passes, Baton Rouge, Louisiana, on March 30, 1961. At approximately 3:32 A.M. on March 31, 1961, the supertanker *Esso Zurich* bound upriver for Baton Rouge collided with and sunk an unmanned and unlighted barge, which was drifting in the channel. The incident was reported by radio to the barge fleet at Baton Rouge and the two barges, M 65 and L 1, were discovered missing. Although only one barge, believed to be the L 1, was located and showed marks of a collision, both barges, L 1 and M 65, were reported by Cargo Carriers, Inc. as sunk. Cargo Carriers, Inc. then marked the barges for day and night navigation. On April 9, 20, and 26, 1962, Inland Rivers Transportation Co. and Cargo Carriers, Inc. wired the District Engineers that they had abandoned the Barges, L 1 and M 65, and considered the Government the owner of the vessels. The United States by return wires refused to accept abandonment and responsibility for marking and removing the wrecks. The United States then brought suit against the owners, managers and charterers of the barges alleging negligence in the condition

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(Continued from preceding page)

portation Co., et al., involving the barge Wychem 112 the parties defendant are the owner of the chlorine cargo, Union Carbide Corporation; the owner of the Wychem 112, Wyandotte Transportation Co.; and the owner of the tugboat which was moving the Wychem 112, Union Barge Line Corporation. The chlorine tanks on the Wychem had been removed from the water when the litigation commenced.

and mooring of the barges, to have the defendants decreed the owners of the wrecked barges and liable for their removal.

The facts in the second case, *United States v. Wychem,* are somewhat more dramatic. On March 15-17, 1961, the tanks of the barge, Wychem 112, a liquid chlorine barge, were each filled at Geismar, Louisiana, with 555,000 pounds of chlorine gas to be delivered to Union Carbide Corporation at South Charleston, West Virginia. The barge, owned by Wyandotte Transportation Co., was taken in tow on March 21, 1961, by the towboat Eastern, owned and operated by Union Barge Line Corp. The barge, Wychem 112, was in the fourth and last tier of the four tiers of barges of the tow which kept the chlorine barge under easy observation from the towboat. At Baton Rouge the Wychem 112 was placed in the first tier away from direct observation of the towboat's pilothouse and in a position where it would bear the brunt of the weather. On March 23, 1961, with weather and visibility good but with a strong current the Wychem 112 began to dive and it sank near Vidalia, Louisiana, in the Mississippi River. Effort was made by the owners and operators of the barge in the fall of 1961 to locate and raise the cargo. Two objects were located, either of which could have been the wreck, both under hard packed sand. In November 1961 it was determined that further efforts would be unsuccessful and the owners tendered abandonment to the Government. Thereafter, the Government began a study of the extent and potential danger of the chlorine. In July 1962 technical opinions were issued to the effect that as long as the barge remained in the river it was a potential hazard in that a leak could develop at any time and recommendations were made to raise the chlorine tanks. The Government informed Wyandotte that it accepted abandonment

and would proceed with removal under Section 19 of the Rivers and Harbors Act of 1899.[2] In view of the Government's opinion that the chlorine constituted a hazard to public health and safety, the President on October 10, 1962, proclaimed it a major disaster. The tanks were removed at a cost of approximately $3,081,000 with the concerted effort of civil defense, public health and state authorities.[3] The United States then brought suit against the cargo, shippers, carriers and consignee, alleging negligence in the construction, condition and towing of the barge to recover the costs of removal. Upon motion of the United States, the District Court ordered the sale of the chlorine cargo and containers which had been seized by the marshal at the commencement of the suit and the proceeds paid into court pending final disposition of the litigation.

The question brought before us in both of these cases is whether one may abandon with impunity an allegedly negligently sunk vessel which obstructs navigation or may the Government compel the negligent party to remove it or pay the cost of removal.

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[2] In the case of the Wychem the record indicates a possible conflict of evidence on the question of whether the Government accepted the abandonment. The trial court concluded that there was an abandonment and that the Government acknowledged and accepted the abandonment by attaching, seizing and selling the vessel, tanks and cargos when raised from the river. As will be seen later a determination of the question of abandonment is not necessary to our decision.

[3] For an interesting account of the sinking of the barge, Wychem 112, and the raising of the chlorine containers, see Fales, "Time Bombs in the Mississippi," Popular Science Monthly, April 1963.

Of the total sum spent, $1,565,000 was for engineering expense. The remaining $1,516,000 was for public health and safety expense, which included precautions against hazards resulting from a possible rupture of the chlorine tanks during their removal.

Appellant contends that under both the Rivers and Harbors Act of 1899, and under the federal common law of abatement of public nuisances, those responsible for the negligent sinking of a vessel in a navigable channel have a duty to remove the vessel or reimburse the United States if it conducts the removal operation. It is contended by the appellees that Section 15 of the Rivers and Harbors Act of 1899 gives the owner of a sunken vessel the right to abandon it and that Section 19 of the Act, which gives the Government the right to remove abandoned sunken vessels and proclaims the Government the owner of the vessels and proceeds of their sale, is the sole and exclusive remedy of the United States pertaining to the removal of such vessels from inland waterways.

Congressional action concerning the problem of abandoned craft in the navigable waters of the United States began with the passage of the River and Harbor Act of 1880, 21 Stat. 180 et seq. Section 4, 21 Stat. 197, provided that when a sunken vessel obstructed navigation and was not removed "as soon as practicable," the vessel would be deemed abandoned and subject to removal by the Government. Two years later Congress enlarged the power of the Government granted in the 1880 Act by authorizing the sale of such sunken vessels before their removal.[4] In 1890 Congress enacted additional legislation[5] which contained two relevant provisions. Section 8, 26 Stat. 454, provided that if a wrecked vessel remained longer than two months it could be removed by the Government; and Section 10, 26 Stat. 455, prohibited the "creation of any obstruction, not affirmatively authorized by law, to the navigable capacity of any waters," and authorized the issuance of an injunction to compel the re-

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[4] River and Harbor Act of 1882, 22 Stat. 191, 208-209.

[5] River and Harbor Act of 1890, 26 Stat. 426 et seq.

moval of such obstructions. Apparently the thrust of these statutes was to explicitly permit the Government to rid channels of abandoned vessels and also to make it clear that obstruction of navigation was unlawful. This is borne out in *United States v. Hall*, 63 F. 472 (1 Cir. 1894), where the Government brought an action to compel the removal of a wilfully abandoned and sunk vessel which obstructed navigation. The court held that vessels were obstructions within the meaning of Section 10 of the 1890 Act and ordered the defendant to remove them. Thus, the court did not interpret those portions of the various acts, which gave the Government the right to remove and sell abandoned vessels, to mean that an abandoned sunken vessel was not an obstruction prohibited by Section 10 of the Act.

Finally, in 1899 Congress enacted the Rivers and Harbors Act[6] involved in the present litigation. The purpose of this legislation was to codify the existing laws relating to navigable waters and House Conferees stated it made no essential changes in the existing law.[7] Since the *Hall* case was part of the existing law, it assumes great importance in making a final decision concerning the application of the various sections of the Act.

Those sections of the 1899 Act with which we are concerned are as follows:

> Section 10: [8] "The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures * * * except on plans recommended by

[6] 30 Stat. 1121 et seq., as amended, 33 U.S.C. 401 et seq.

[7] 32 Cong. Rec., 2296-2298; 32 Cong. Rec. pt. 3, 2923.

[8] 30 Stat. 1151, 33 U.S.C. 403.

the Chief of Engineer and authorized by the Secretary of the Army; * * *.

Section 12: [9] Every person and every corporation that shall violate any of the provisions of sections 9, 10 and 11 * * * shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding $2,500 nor less than $500, or by imprisonment not exceeding one year * * *. And further, the removal of any structures or parts of structures erected in violation of the provisions of the said sections may be enforced by the injunction * * *.

Section 15: [10] It shall not be lawful to * * * voluntarily or carelessly sink, or permit or cause to be sunk, vessels or other craft in navigable channels; * * *. And whenever a vessel, raft, or other craft is wrecked and sunk in a navigable channel, accidentally or otherwise, it shall be the duty of the owner of such sunken craft to immediately mark it * * * and maintain such marks until the sunken craft is removed or abandoned * * * and it shall be the duty of the owner of such sunken craft to commence the immediate removal * * * and failure to do so shall be considered as an abandonment of such craft, and subject the same to removal by the United States * * *.

Section 16: [11] Every person and every corporation that shall violate * * * sections 13, 14 and 15 of this title shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding $2,500 nor less than $500, or by imprisonment for not less than 30 days nor more than one year * * *.

Section 19: [12] Whenever the navigation of any river * * * shall be obstructed or endangered by any

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[9] 30 Stat. 1151, 33 U.S.C. 406.

[10] 30 Stat. 1152, 33 U.S.C. 409.

[11] 30 Stat. 1153, 33 U.S.C. 411.

[12] 30 Stat. 1154, 33 U.S.C. 414.

> sunken vessel * * * and such obstruction has existed for a longer period than 30 days, or whenever the abandonment of such obstruction can be legally established in a less space of time, the sunken vessel * * * shall be subject to be broken up, removed, sold or otherwise disposed of by the Secretary of the Army at his discretion * * *. That any money received from the sale of such wreck * * * shall be covered into the Treasury of the United States.

It has been argued that the only portions of the Act quoted above which are applicable to sunken vessels are Sections 15, 16 and 19. The obstruction of navigable waters by sunken vessels and the right of the Government to remove these abandoned sunken vessels is given separate and distinct treatment in the Act apart from all other obstructions, thus vessels have been removed from the ambit of Sections 10 and 12. In addition, the earlier Acts which formed the basis of the 1899 Act had no provisions similar to Section 15 of the 1899 Act prohibiting the voluntary and careless sinking of craft in navigable waters, therefore Congress was explicitly treating vessels *in toto* in a section entirely apart from all other prohibitions. The Act further provides a separate criminal penalty for the violation of Section 15 as well as conferring upon the Government all rights of ownership in an abandoned vessel, thus other civil remedies provided by the Act for violation of other sections are inapplicable. Therefore, according to the argument, ignoring Sections 10 and 12 and reading the remaining sections literally, one with impunity can sink and abandon a vessel and incur only the loss of such abandoned vessel plus the possible imposition of the criminal penalties if the sinking occurred voluntarily or carelessly.

Although the statutory language is subject to an interpretation as the foregoing suggests, it is not atune with the

legislative history or logical common sense. The history of the various acts demonstrates an intent of Congress to provide a method of government removal of vessels, not to limit the liability of those causing the sinking. It is illogical to conclude that a vessel is not an obstruction solely because it is given separate treatment. *Hall* bears this out. When that case was decided, provisions for the abandonment and removal of sunken vessels were in existence, but nevertheless the court found that a vessel was still an obstruction. Also, the introduction of the prohibition of Section 15, "unlawful to voluntarily or carelessly sink" seems more likely to be just an emphatic restatement of the Section 10 prohibition against creating an obstruction, and not an effort to remove sunken vessels from the reach of Section 10. In addition, the imposition of a separate criminal penalty along with giving the Government the right to remove and sell the abandoned vessel does not preclude a vessel from being an obstruction.

It has also been argued that even though a vessel is properly an obstruction, the injunction remedy of Section 12 is not applicable to obstructions but just to structures which are separately listed in the various sections. This we think is reading out of a statute what Congress clearly meant to include. There is no reason to limit the injunction to the items which must be built by approval from the Government to the exclusion of obstructions which is the *primary* prohibition of Section 10. The prohibition is directed to "the creation of *any* obstruction" and is not limited to obstructions which are *created* in a peculiar or particular manner.

In addition, the statutes do not specifically authorize a suit by the Government for the recovery of removal expenses. This we think is implied. It is illogical to reason that the Government having been given the right to re-

move is penalized for exercising its right, and in order to gain full benefit from the statutory provisions must wait for the slower injunctive process. The right to recover *in rem* from the vessel so removed flows from ownership of the vessel and does not preclude recovery of reasonable removal costs from a tortfeasor.

Our reading of the statutes now needs to be considered in light of the cases decided under the Act. Unfortunately, they are inconclusive and at best have muddied the waters surrounding the sunken vessels.

Several cases, *Loud v. United States*, 286 F. 56 (6 Cir. 1923); *The Manhatten*, 10 F. Supp. 45 (D. C. Pa. 1935), aff'd. 85 F. 2d 427 (3 Cir. 1935), cert. denied, sub nom *United States v. The Bessemer*, 300 U. S. 654 (1937); *In re Eastern Transportation Co.*, 102 F. Supp. 913 (D. C. Md.), aff'd. sub nom *Ottenheimer v. Whitaker*, 198 F. 2d 289 (4 Cir. 1952); *United States v. Bethlehem Steel Corp. (The Texmar)*, 319 F. 2d 512 (9 Cir. 1963), have concluded that the Sections 10 and 12 are not applicable to sunken vessels. In *Loud* the United States brought an action to recover the amount expended in straightening a sunken vessel in a navigable channel. The sunken barge, owned by Loud, had collided with an abutment and sunk, thus obstructing navigation. The Government after straightening the vessel surrendered it to the owner. The court denied recovery and held that the United States only had a claim against the vessel which it lost by voluntarily surrendering ownership. Significant here is the fact that there were no claims of negligence on the part of Loud, therefore, it may be assumed the collision and sinking were neither the result of wilfullness nor carelessness on the part of Loud. That being true, the case is correctly decided in that Loud has not violated any provision of the Act subjecting him to liability. In the *Manhatten* the Govern-

ment raised its sunken dredge and sought reimbursement from those responsible for its sinking. The court in deciding against the Government considered only the sections of the Act pertaining to the sinking and abandonment of the vessel, and found nothing in the statute allowing the Government to recover from a tortfeasor. The *Ottenheimer* case presented the court with the question of whether the owner of floating barges could abandon them in navigable waters and allow them to sink. The court concluded that despite the forceful opinion of the *Hall* case a vessel was not a structure within the meaning of Sections 10 and 12. Hence it decided the case under Section 15 and concluded that an owner could only abandon a vessel by virtue of "fire, storm, collision or unforeseen unseaworthiness." Since this abandonment was wilful and not one of the above, the court ordered the owners to remove the floating barge. In the *Texmar* case, which is factually similar to the present case, the Government raised an allegedly negligently sunk vessel and sought reimbursement. While admitting the statutes were confusing, the court concluded that sunk vessels were treated outside Section 10; and since Section 15 limited itself to criminal penalties and Section 19 gave the Government the right to recover against the vessel, the Government had no claim. The dissent in the *Texmar* case took the other approach. The removal provisions are not a substitute for Section 10 but the prohibition of Section 10 applies also to vessels.

The line of reasoning in the *Texmar* dissent is demonstrated in several cases, *United States v. Bridgeport Towing Line Inc.*, 15 F. 2d 240 (D. C. Conn. 1926); *United States v. Wilson*, 235 F. 2d 251 (2 Cir. 1956); *United States v. Zubick*, 295 F. 2d 53 (3 Cir. 1961). In *Bridgeport* a craft, while being towed, slipped and sank due to the negligence of the defendants, resulting in an obstruction

to navigable waters. The Government sued for an injunction under Section 12 to compel the owners to remove the craft. The court, while holding that the provisions of Sections 10 and 12 are applicable to the facts presented, denied relief on the ground that the prohibition against the creation of obstructions meant only a prohibition against the wilful, not negligent, creation of navigable obstructions. The *Wilson* case held that a sunken barge was properly an obstruction under Section 10 but the injunction provision of Section 12 only applied to structures and not to obstructions. In *Zubick* the court treated the Section 12 injunctive power and the provisions of Section 19, giving the Government the right to remove sunken vessels, as an election. And since the Government chose to raise the vessel, its rights were limited to the vessel itself or to the proceeds from the sale of such vessel.

Three cases, *United States v. Bethlehem*, 235 F. Supp. 569 (D. C. Md. 1964); *United States v. Perma Paving Co.*, 332 F. 2d 754 (2 Cir. 1964); *United States v. Republic Steel Corp.*, 362 U. S. 482, 80 S. Ct. 884, 4 L. ed. 2d 903 (1960), although not dealing with the problem of sunken vessels, shed light on whether the Section 12 injunction is properly applicable to obstructions. In *Bethlehem* the defendant deliberately grounded a floating drydock in navigable waters. The court held that the drydock was not a vessel, but an obstruction under Section 10, and thereby granted an injunction for its removal. In *Perma* the defendant put excessive weight on his property causing silt to move into the bed of a stream causing obstruction to navigation. The Government sought reimbursement for dredging the channel. The court recognized the application of the injunction power and concluded that there was no basis for reading the statute narrowly; and since the Government could have compelled *Perma* to re-

move the silt, the Government could seek reimbursement for its dredging operations. In *Republic Steel* the Government sought to compel the removal of deposits. The Supreme Court held there to be an obstruction and granted an injunction not by Section 12 but solely under Section 10. The prohibition of an act carried with it the inherent power to enjoin the act.

These cases not only demonstrate an approach far from uniform but illustrate the myriad interpretations of the statutes in question. Faced with this array of diversified opinion we are necessarily thrown back to the legislative history and the wording of the statutes themselves, which leads us to conclude that those cases finding a vessel an obstruction under Section 10 and thus subject to the injunction power of Section 12 are to be given the greatest weight.

Our reading of the statute is identical with an administrative interpretation[13] adopted by the Army Corps of Engineers which provides in part:

> "* * * a person who wilfully or negligently permits a vessel to sink in navigable waters of the United States may not relieve himself from all liability by merely abandoning the wreck. He may be found guilty of a misdemeanor and punished by fine, imprisonment, or both, and in addition may have his license revoked or suspended. He may also be compelled to remove the wreck as a public nuisance or pay for its removal."

This is not "an authorized effort to administratively improve the statute" [14] but a clear and precise statement of what the statute actually says.

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[13] 33 C.F.R. 209.410 (1962), first published at 11 Fed. Reg. 177 A-828 (1946).

[14] The Texmar at 520.

Appellees point out that Congress must think it is required to raise vessels from navigable waters for it appropriates funds for "removing sunken vessels or craft obstructing or endangering navigation." 31 U. S. C. 725 a (b) (14). This is certainly no support for the right of an owner to abandon his vessel with impunity because the Government must always bear removal costs of innocent owners; and also the Government might wish to remove a negligently or wilfully sunk vessel instead of enforcing the injunctive process. No doubt there have been cases in the past, and most likely others will arise in the future, when removal by the Government would be the preferred remedy in order to avoid the delays inherent in litigation seeking an injunction. In such a situation the Government would need appropriations for the removal even though it could get reimbursed.

Therefore, we believe the correct reading of the statute allows only an innocent owner to abandon his ship and that a negligent party must raise the vessel or pay for its removal. Although appellees point out that a decision imposing liability on them catches them unprepared for such an occurrence, such an argument seems inappropriate as a means of avoiding the consequences of one's negligence.

A vast inland waterway such as we have under consideration here, the Mississippi River, is a national highway in which all of the people have an interest.[15] It is a national asset. Such streams rarely, if ever, come to us in useful form in their natural state when measured by the standards and requirements of present day commerce.

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[15] See, for example, 33 U.S.C. § 10:

"All the navigable rivers and waters in the former territories of Orleans and Louisiana shall be and forever remain public highways."

Precisely for this reason the national Government, and in many cases state and local governments as well, have spent vast sums in successful reasearch and efforts to improve, prepare and maintain them as natural resources. The national character of this natural resource gives the Government an essential federal interest in it as a national artery of commerce.

It is not reasonable, we conclude, for the national Government to go to such trouble and expense to prepare, preserve and maintain this river, allow its use to be impaired seriously by those who use it most, and then permit such users to insulate themselves from liability for proved negligence. Moreover, our interpretation of the statute is not unusual in view of the wide-spread national interest in its subject matter. For example, in dealing with antitrust legislation involving statutes of remarkable brevity but of wide-spread application, Chief Justice Hughes stated that the Sherman Antitrust Act, "as a charter of freedom, * * * has a generality and adaptability comparable to that found to be desirable in constitutional provisions. * * * The restrictions the Act imposes are not mechanical or artificial. Its general phrases, interpreted to attain its fundamental objects, set up the essential standard of reasonableness." *Appalachian Coals, Inc. v. United States,* 288 U. S. 344, 359-360 (1933). See also *Standard Oil Co. of New Jersey v. United States,* 221 U. S. 1 (1911); Report of the Attorney General's National Committee to Study the Antitrust Laws (1955), p. 5 et seq.

While it is true that the statutes under consideration could have been drafted with greater clarity and more detail, it is clear to us that the Congressional intent underlying the Rivers and Harbors Act to prevent interferences with and obstructions to navigable streams is so compelling and fundamental as to require the inference that appro-

priate civil remedies may be applied to those responsible for such interferences and obstructions. See *United States v. Republic Steel, supra.*

Nor do we consider the reasoning which we have applied to be at variance with fundamental concepts of the law of negligence. In 1897 Mr. Justice Holmes stated:

> "I think that the law regards the infliction of temporal damage by a responsible person as actionable, if under the circumstances known to him the danger of his act is manifest according to common experience, or according to his own experience if it is more than common, except in cases where upon special grounds of policy the law refuses to protect the plaintiff or grants a privilege to the defendant."

"The Path of the Law" (address delivered in 1897); reprinted in "Jurisprudence in Action," p. 276; "A Treasury of Legal Quotations" (Cook 1961), p. 131. In the circumstances of this case the inherent, imminent and impending danger of the presence of 2,220,000 pounds of deadly chlorine gas in the channel of the Mississippi River, and the obstruction resulting from the presence of the sunken barges L 1 and M 65, were certainly and positively clear to these appellees who were engaged in the "more than common experience" of using the river. We are unable to find any special grounds of policy upon which to refuse relief to the Government or to grant a special privilege or exemption to the defendants if it is proved that their negligence caused the sinking of the barges.

Since appellees' liability stems from their allegedly negligent acts regarding the sinking of the various vessels, it must be determined whether the alleged acts constituted negligence on the part of any of the defendants. If the defendants in the *Cargill* case are found to be negligent, the court should order the defendants to raise the barges,

M 65 and L 1, from the navigable waters of the Mississippi River or bear the reasonable cost of their removal. If negligence is found on the part of the defendants in *Wychem*, the damages to which the Government is entitled are those reasonably flowing from appellees' negligence and subsequent failure to raise the vessel. Since the Government properly could have demanded the removal, the cost of removal by the Government is to be given consideration in fixing damages but is not conclusive.

Since we have properly found liability under the Act, it is not necessary to deal with the contentions of the appellant that under the federal common law the appellees are liable for the abatement of a public nuisance.

Judgment reversed and the cases are remanded for a determination of whether the acts of the various defendants constituted negligence.

REVERSED AND REMANDED.

APPENDIX C.

OPINION AND JUDGMENT OF COURT OF APPEALS ON PETITION FOR REHEARING.

(No. 22148—Title Omitted.)

Before RIVES and GEWIN, Circuit Judges, and ALLGOOD, District Judge.

PER CURIAM: Upon consideration of the petition for rehearing by Union Carbide Corporation, we conclude that there are no allegations or proof of negligence on the part of Union Carbide Corporation and that the summary judgment of the District Court in its favor ordering dismissal of the libel against it should be and the same hereby is AFFIRMED. The opinion, judgment and mandate of this Court are hereby modified and amended in accordance with this order.

It is further ORDERED that the petition for rehearing by all of the other parties in said cause be, and the same is hereby DENIED.

JUDGMENT.

This cause came on to be heard on the Petitions for Rehearing filed on August 2, 1966;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged that the opinion, judgment and mandate of this Court are hereby modified and amended in accordance with this Court's opinion on rehearing; and that the judgment of the said District Court ordering dismissal of the libel against appellee, Union Carbide Corp., is hereby affirmed.

Issued as Mandate: September 12, 1966

APPENDIX D.

STATUTES INVOLVED.

33 U. S. C. 403:

The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of the Army; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven, harbor, canal, lake, harbor or refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army prior to beginning the same. Mar. 3, 1899, c. 425, § 10, 30 Stat. 1151.

33 U. S. C. 406:

Every person and every corporation that shall violate any of the provisions of sections 401, 403, and 404 of this title or any rule or regulation made by the Secretary of the Army in pursuance of the provisions of section 404 of this title shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding $2,500 nor less than $500, or by imprisonment (in the case of a natural person) not exceeding one year, or by both such punishments, in the discretion of the court.

And further, the removal of any structures or parts of structures erected in violation of the provisions of the said sections may be enforced by the injunction of any district court exercising jurisdiction in any district in which such structures may exist, and proper proceedings to this end may be instituted under the direction of the Attorney General of the United States. Mar. 3, 1899, c. 425, § 12, 30 Stat. 1151; Feb. 20, 1900, c. 23, § 2, 31 Stat. 32; Mar. 3, 1911, c. 231, § 291, 36 Stat. 1167.

33 U. S. C. 409:

It shall not be lawful to tie up or anchor vessels or other craft in navigable channels in such a manner as to prevent or obstruct the passage of other vessels or craft; or to voluntarily or carelessly sink, or permit or cause to be sunk, vessels or other craft in navigable channels; or to float loose timber and logs, or to float what is known as "sack rafts of timber and logs" in streams or channels actually navigated by steamboats in such manner as to obstruct, impede, or endanger navigation. And whenever a vessel, raft, or other craft is wrecked and sunk in a navigable channel, accidentally or otherwise, it shall be the duty of the owner of such sunken craft to immediately mark it with a buoy or beacon during the day and a lighted lantern at night, and to maintain such marks until the sunken craft is removed or abandoned, and the neglect or failure of the said owner so to do shall be unlawful; and it shall be the duty of the owner of such sunken craft to commence the immediate removal of the same, and prosecute such removal diligently, and failure to do so shall be considered as an abandonment of such craft, and subject the same to removal by the United States as provided for in sections 411-416, 418, and 502 of this title. March 3, 1899, c. 425, § 15, 30 Stat. 1152.

33 U. S. C. 411:

Every person and every corporation that shall violate, or that shall knowingly aid, abet, authorize, or instigate a violation of the provisions of sections 407, 408, and 409 of this title shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding $2,500 nor less than $500, or by imprisonment (in the case of a natural person) for not less than thirty days nor more than one year, or by both such fine and imprisonment, in the discretion of the court, one-half of said fine to be paid to the person or persons giving information which shall lead to conviction. Mar. 3, 1899, c. 425, § 16, 30 Stat. 1153.

33 U. S. C. 412:

Any and every master, pilot, and engineer, or person or persons acting in such capacity, respectively, on board of any boat or vessel who shall knowingly engage in towing any scow, boat, or vessel loaded with any material specified in section 407 of this title to any point or place of deposit or discharge in any harbor or navigable water, elsewhere than within the limits defined and permitted by the Secretary of the Army, or who shall willfully injure or destroy any work of the United States contemplated in section 408 of this title, or who shall willfully obstruct the channel of any waterway in the manner contemplated in section 409 of this title, shall be deemed guilty of a violation of sections 401, 403, 404, 406, 407, 408, 409, 411-416, 418, 502, 549, 686, and 687 of this title, and shall upon conviction be punished as provided in section 411 of this title, and shall also have his license revoked or suspended for a term to be fixed by the judge before whom tried and convicted. And any boat, vessel, scow, raft, or other craft used or employed in vio-

lating any of the provisions of sections 407, 408, and 409 of this title shall be liable for the pecuniary penalties specified in section 411 of this title, and in addition thereto for the amount of the damages done by said boat, vessel, scow, raft, or other craft, which latter sum shall be placed to the credit of the appropriation for the improvement of the harbor or waterway in which the damage occurred, and said boat, vessel, scow, raft, or other craft may be proceeded against summarily by way of libel in any district court of the United States having jurisdiction thereof. Mar. 3, 1889, c. 425, § 16, 30 Stat. 1153.

33 U. S. C. 414:

Whenever the navigation of any river, lake, harbor, sound, bay, canal, or other navigable waters of the United States shall be obstructed or endangered by any sunken vessel, boat, water craft, raft, or other similar obstruction, and such obstructon has existed for a longer period than thirty days, or whenever the abandonment of such obstruction can be legally established in a less space of time, the sunken vessel, boat, water craft, raft, or other obstruction shall be subject to be broken up, removed, sold, or otherwise disposed of by the Secretary of the Army at his discretion, without liability for any damage to the owners of the same: *Provided*, That in his discretion, the Secretary of the Army may cause reasonable notice of such obstruction of not less than thirty days, unless the legal abandonment of the obstruction can be established in a less time, to be given by publication, addressed "To whom it may concern," in a newspaper published nearest to the locality of the obstruction, requiring the removal thereof: *And provided also*, That the Secretary of the Army may, in his discretion, at or after the time of giving such notice, cause sealed proposals to be

solicited by public advertisement, giving reasonable notice of not less than ten days, for the removal of such obstruction as soon as possible after the expiration of the above specified thirty days' notice, in case it has not in the meantime been so removed, these proposals and contracts, at his discretion, to be conditioned that such vessel, boat, water craft, raft, or other obstruction, and all cargo and property contained therein, shall become the property of the contractor, and the contract shall be awarded to the bidder making the proposition most advantageous to the United States: *Provided,* That such bidder shall give satisfactory security to execute the work: *Provided further,* That any money received from the sale of any such wreck, or from any contractor for the removal of wrecks, under this paragraph shall be covered into the Treasury of the United States. Mar. 3, 1899, c. 425, § 19, 30 Stat. 1154.

33 U. S. C, 415:

Under emergency, in the case of any vessel, boat, water craft, or raft, or other similar obstruction, sinking or grounding, or being unnecessarily delayed in any Government canal or lock, or in any navigable waters mentioned in section 414 of this title, in such manner as to stop, seriously interfere with, or specially endanger navigation, in the opinion of the Secretary of the Army, or any agent of the United States to whom the Secretary may delegate proper authority, the Secretary of the Army or any such agent shall have the right to take immediate possession of such boat, vessel, or other water craft, or raft, so far as to remove or to destroy it and to clear immediately the canal, lock, or navigable waters aforesaid of the obstruction thereby caused, using his best judgment to prevent an unnecessary injury; and no one shall inter-

fere with or prevent such removal or destruction: *Provided,* That the officer or agent charged with the removal or destruction of an obstruction under this section may in his discretion give notice in writing to the owners of any such obstruction requiring them to remove it; *And provided further,* That the expense of removing any such obstruction as aforesaid shall be a charge against such craft and cargo; and if the owners thereof fail or refuse to reimburse the United States for such expense within thirty days after notification, then the officer or agent aforesaid may sell the craft or cargo, or any part thereof that may not have been destroyed in removal, and the proceeds of such sale shall be covered into the Treasury of the United States. Mar. 3, 1899, c. 425, § 20, 30 Stat. 1154.